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American Safety Indemnity Company

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

ACCEPTANCE INSURANCE  
COMPANY,

Plaintiff,

vs.

AMERICAN SAFETY RISK  
RETENTION GROUP, INC., and  
AMERICAN SAFETY INDEMNITY  
COMPANY,

Defendants.

Case No. CV08-01577 GPS (AGRx)

**AMERICAN SAFETY  
INDEMNITY COMPANY'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO REMAND CASE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

[Filed and Served Concurrently with  
supporting Declaration of Jean D.  
Fisher; and Evidentiary Objections to,  
and Motion to Strike Portions of,  
Declaration of Brett G. Hampton]

Date: April 28, 2008  
Time: 1:30 p.m.  
Place: Courtroom 7  
Judge: Hon. George P. Schiavelli

ORAL ARGUMENT REQUESTED

Defendant AMERICAN SAFETY INDEMNITY COMPANY ("ASIC")  
respectfully submits the following Memorandum of Points and Authorities in  
Opposition to Plaintiff ACCEPTANCE INSURANCE COMPANY's ("Plaintiff"  
or "Acceptance") Motion to Remand Case.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff's Motion to Remand this case to state court (hereinafter Plaintiff's "motion") is completely without merit.

Plaintiff does not dispute that the amount in controversy satisfies the requirements of 28 U.S.C. § 1332(a), nor that ASIC filed its Notice of Removal within thirty days after ASIC was served.

Plaintiff bases its motion on the claims that (1) removal was untimely because the thirty-day time limit began when the first party in the case, AMERICAN SAFETY RISK RETENTION GROUP, INC. ("ASRRG"), was served shortly after the Complaint was filed on May 22, 2006, and because the one-year limitations period began on May 22, 2006, and has also expired; and (2) ASIC is a "citizen" of California because its "principal place of business" is purportedly located here, and therefore 28 U.S.C. § 1441(b) prohibits removal.<sup>1</sup>

Plaintiff's arguments are based on outdated case law, misrepresentation of facts, and an incomplete record, and for these reasons must fail.

While the two older cases cited by Plaintiff held that the thirty-day removal period begins when the first defendant in a case is served, more recent cases in California and outside the Ninth Circuit have undermined that rule, determined that rule to be in conflict with Supreme Court precedent, and have held that a later-served defendant is accorded the full thirty (30) days after service in which to remove.

Further, the one-year limitations period in 28 U.S.C. § 1446(b) has repeatedly been held to apply only to cases that are not initially removable when

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<sup>1</sup> Plaintiff erroneously refers to this argument as ASIC's suffering a "lack of diversity." However, any so-called "lack of diversity" does not appear to be the basis of Plaintiff's argument, as Plaintiff does not in fact assert that it is a citizen of California, as Plaintiff would necessarily argue if Plaintiff claimed diversity were lacking.

1 filed in state court, and thus, according to Plaintiff's own argument that first-  
 2 served defendant ASRRG could have removed, it is inapplicable in this case. In  
 3 sum, ASIC's removal was absolutely timely.

4 Equally important, ASIC is not a citizen of California. ASIC is  
 5 incorporated in the state of Oklahoma, and has its main office in Atlanta,  
 6 Georgia, where its corporate activity takes place and its executive functions are  
 7 performed. (See Declaration of Jean D. Fisher ["Fisher Dec."], filed herewith.)

8 Despite Plaintiff's representations to the contrary, ASIC has no office or  
 9 employees in the state of California. The "evidence" that Plaintiff has presented  
 10 has no bearing on ASIC's citizenship because it pertains to an entirely separate  
 11 corporation, American Safety Insurance Services, Inc. ("ASIS"), which is a third  
 12 party claims administrator for ASIC. The fact that the Plaintiffs misleadingly  
 13 leaves out of the moving papers is that there is no question that ASIS and ASIC  
 14 are distinct and independent corporations. The fact that ASIS may handle  
 15 administrative matters as a contractor for ASIC does not make ASIC a "citizen"  
 16 of California, as argued by the Plaintiff.

17 ASIC's Notice of Removal was timely filed within thirty (30) days of the  
 18 date ASIC was served. 28 U.S.C. § 1441(b) poses no bar to removal because  
 19 ASIC is not a citizen of California, but rather of the states of Oklahoma and  
 20 Georgia. Accordingly, removal was proper, and Plaintiff's motion to remand the  
 21 matter to state court should be denied.

## 22 **II. RELEVANT FACTS**

### 23 **A. It Is Undisputed That ASIC Removed This Matter Within Thirty** 24 **Days After ASIC Was Served**

25 Plaintiff cannot reasonably dispute that it served ASIC with the First  
 26 Amended Complaint through ASIC's agent for service of process, CT  
 27 Corporation, on February 26, 2008, or that ASIC filed its Notice of Removal on  
 28

1 March 6, 2008, less than thirty (30) days later. (See Notice of Removal.)

2 **B. Citizenship of Defendants ASIC and ASRRG, and Their Third-**  
 3 **Party Claims Administrator ASIS**

4 Defendant ASIC is incorporated in the state of Oklahoma, and has its main  
 5 office in Atlanta, Georgia.<sup>2</sup> (Fisher Dec., Para. 4.) ASIC's management  
 6 activities and executive functions are performed in its office in Atlanta, Georgia,  
 7 where ASIC's officers are located. (Fisher Dec., Para. 4.) ASIC has no  
 8 employees in California, and no office located in California. (Fisher Dec., Para.  
 9 4.)

10 Defendant ASRRG is incorporated in the state of Vermont, and has its main  
 11 office in Atlanta, Georgia. (Fisher Dec., Para. 5.) ASRRG's management  
 12 activities and executive functions are performed in its office in Atlanta, Georgia,  
 13 where ASRRG's officers are located. (Fisher Dec., Para. 5.) Likewise, ASRRG  
 14 has no employees in California, and no office located in California. (Fisher  
 15 Dec., Para. 5.)

16 ASIC and ASRRG are separate, unrelated corporations. (Fisher Dec., Para.  
 17 6.) On the one hand, ASIC is a subsidiary of a publicly-traded company,  
 18 American Safety Insurance Holdings, Ltd. (Fisher Dec., Para. 6.) On the other  
 19 hand, ASRRG is a risk retention group, and as such, its shareholder members are  
 20 comprised of its policyholders, including Bay Area Construction Framers.  
 21 (Fisher Dec., Para. 6.) ASRRG is not a subsidiary entity, and is not related to  
 22 ASIC. (Fisher Dec., Para. 6.)

23 ASIS is a separate corporation which administers claims and underwriting  
 24 on behalf of Defendants ASIC and ASRRG. (Fisher Dec., Para. 7.) ASIS is a  
 25

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26 <sup>2</sup> Although Plaintiff alleges in its First Amended Complaint that ASIC is incorporated in  
 27 the State of Georgia, and this was recited in ASIC's Notice of Removal for purposes of reflecting  
 28 diversity, ASIC's state of incorporation is in fact Oklahoma. (See Declaration of Jean Fisher, filed  
 concurrently herewith.)

Georgia corporation, with its main office in Atlanta, Georgia. ASIS has five (5) offices nationwide, including offices in Atlanta, Georgia; Cherry Hill and Middleton, New Jersey; San Diego, California; and Strongsville, Ohio. (Fisher Dec., Para. 7.) Of ASIS' offices, the only one located in California is the construction defect claims office located in San Diego, California. (Fisher Dec., Para. 7.) ASIS has approximately 100 employees in its main office in Atlanta, Georgia office, and 15 employees in its California office. (Fisher Dec., Para. 7.)

### **III. ARGUMENT IN OPPOSITION**

#### **A. ASIC's Notice of Removal Was Timely**

##### **1. ASIC Is Afforded Thirty (30) Days After Service in Which to Remove**

In support of its argument that the thirty-day removal period begins when the first defendant in a case is served (the so-called "first served rule" or "unanimity rule"), Plaintiff cites Transport Indem. Co. v. Financial Trust Co., 339 F.Supp. 405, 409 (C.D. Ca 1972); and Brown v. Demco, Inc., 792 F.2d 478, 481-482 (5th Cir. 1986).

While those cases held as Plaintiff asserts, more recent cases in California and elsewhere within the Ninth Circuit have rejected the above-expressed rule, and have firmly held that a later-served defendant is accorded the full thirty (30) days after service in which to remove (i.e., the "last served rule"). Bonner v. Fuji Photo Film, 461 F.Supp.2d 1112, 1117-18 (N.D. Cal. 2006) (affirming "last served rule"); Ford v. New United Motors Mfg., Inc., 857 F.Supp. 707, 710 (N.D. Cal. 1994); Drew v. Equifax Info. Services, 2007 U.S. Dist. LEXIS 53157 (N.D. Cal. 2007); Coleman v. Assurant, Inc., 463 F.Supp.2d 1164, 1168 (D. Nev. 2007).

While the Ninth Circuit has not endorsed either rule, a leading California practice treatise has noted:

1 “There is a growing trend outside the Ninth Circuit  
 2 against the uniformity rule with multiple defendants.  
 3 These circuits permit later-served defendants 30 days  
 4 from the date of service of the complaint to file a  
 5 removal notice with the unanimous consent of their co-  
 6 defendants, even though the first-served co-defendants  
 7 did not file a removal notice within 30 days . . .”

8 “Federal Pre-Trial Procedure in California,” Chapter 3:20[4][a], Matthew  
 9 Bender (2007). Indeed, the modern trend is to adopt the “last served rule” and  
 10 give later-served defendants thirty (30) days after service in which to remove.  
 11 Brierly v. Alusuisse Flexible Packaging, Inc., 184 F.3d 527, 532-33 (6th Cir.  
 12 1999), *cert. denied*, 528 U.S. 1076 (1999); Marano Enterprises v. Z-Teca  
 13 Restaurants, L.P., 254 F.3d 753, 755-57 (8th Cir. 2001); Conn. Bank of  
 14 Commerce v. Republic of Congo, 440 F.Supp2d 446 (D Del. 2006).

15 In fact, one recent District Court decision specifically undermined the  
 16 Brown v. Demco, Inc. case upon which Plaintiff now relies, and in so doing  
 17 noted that the “first served rule” rule of Brown is now in conflict with the  
 18 subsequent Supreme Court case of Murphy Brothers, Inc. v. Michetti Pipe  
 19 Stringing, Inc., 526 U.S. 344 (1999). In Piacente v. State University of New  
 20 York, the District Court held:

21 “[T]he Supreme Court's decision in Murphy Bros., supra  
 22 526 U.S. 344 note 5, suggests that the RD [Recent  
 23 Defendant] rule is the proper interpretation of section  
 24 1446(b). Indeed, the Eighth Circuit Court of Appeals  
 25 stated that it found `neither [the FSD rule nor the RD  
 26 rule] particularly compelling, as both are susceptible to  
 27 abuse and have potential to create inequities. We are  
 28 convinced, however, that the legal landscape in this area



1 has been clarified, and perhaps the definitive answer  
 2 portended, by the Supreme Court's decision in *Murphy*  
 3 *Bros.* [supra note 5]. We conclude that, if faced with the  
 4 issue before us today, the [Supreme] Court would allow  
 5 each defendant thirty days after receiving service within  
 6 which to file a notice of removal, regardless of when - or  
 7 if - previously served defendants had filed such notices.”

8 *Piacente v. State University of New York*, 362 F. Supp. 2d 383, at 387-88, fn  
 9 31 (W.D. NY 2004) (emphasis added). The District Court thus concluded:

10 “Moreover, inasmuch as the Fifth Circuit Court of  
 11 Appeals' decisions in *Brown*, supra 792 F.2d 478,  
 12 481-482 note 7, and *Getty Oil*, supra 841 F.2d 1254 note  
 13 7, were decided before *Murphy Bros.*, the policy  
 14 discussions contained therein -- and often adopted by  
 15 courts adopting the FSD rule -- are undermined.”

16 Id. at 390. As such, Plaintiff's authorities are simply no longer good law.

17 Further, Plaintiff's argument that first-served defendant ASRRG “waived”  
 18 ASIC's right to remove because ASRRG's defense was overseen by ASIS, the  
 19 same claim administrator that would eventually come to oversee ASIC's  
 20 defense, is irrelevant. That is, quite simply, ASIC and ASRRG are separate  
 21 and unrelated corporations. (Fisher Dec., Para. 6.) As discussed above, ASIC  
 22 is a subsidiary of a publicly-traded company, American Safety Insurance  
 23 Holdings, Ltd., whereas ASRRG is a risk retention group, with shareholders  
 24 comprised of, essentially, policyholders. (Fisher Dec., Para. 6.)

25 Likewise, the argument that ASRRG “waived” ASIC's separate right to  
 26 remove because ASRRG, as a defendant, somehow “availed itself of state  
 27 court,” is ridiculous. It is Plaintiff that filed this action in state court.

28 Accordingly, 28 U.S.C. § 1446(b) provides ASIC with thirty (30) days

1 following service in which to remove, and it is undisputed that ASIC timely did  
2 so.

3  
4 **2. The One-Year Limitations Period of 28 U.S.C. § 1446(b)**  
5 **Does Not Apply In This Case, Because This Case Was**  
6 **Initially Removable**

7 Plaintiff also contends that ASIC's removal was untimely because the  
8 one-year limitations period contained in 28 U.S.C. § 1446(b) began when this  
9 action was first filed in state court on May 22, 2006, and therefore expired one  
10 year later. However, this claim is frivolous.

11 The one-year limitations period set forth in 28 U.S.C.S. § 1446(b) applies  
12 only to cases that were not removable to federal court when originally filed.  
13 Ritchey v. Upjohn Drug Co., 139 F.3d 1313 (9<sup>th</sup> Cir. 1998), *cert den* 525 U.S.  
14 963 (1998); New York Life Ins. Co. v. Deshotel, 142 F.3d 873 (5<sup>th</sup> Cir. 1998);  
15 Brown v Tokio Marine & Fire Ins. Co., 284 F.3d 871 (8<sup>th</sup> Cir. 2002), *cert den*  
16 537 U.S. 826 (2002); Bosky v. Kroger Tex., LP, 288 F.3d 208 (5<sup>th</sup> Cir. 2002).

17 In the present case, Plaintiff admits that first-served defendant ASRRG  
18 could have removed this matter when served with the initial Complaint.  
19 (Motion to Remand, p. 8, lines 4-10.) This conclusion is supported by the fact  
20 that ASRRG is a Vermont corporation, with its main office in Atlanta, Georgia,  
21 and is thus diverse from Plaintiff. (See Fisher Dec., Para. 5; 28 U.S.C. § 1332).

22 Therefore, the one-year limitations period set forth in 28 U.S.C. § 1446(b)  
23 does not apply to this matter, and the case was timely removed by ASIC within  
24 30 days following service upon ASIC.

25 **B. ASIC Is Not a "Citizen" of California, and Therefore 28 U.S.C.**  
26 **§ 1441(b) Poses No Bar to Removal**

27 Finally, Plaintiff asserts that ASIC is a "citizen" of California because its  
28 "principal place of business" is purportedly located here, and therefore



1 removal is prohibited by 28 U.S.C. § 1441(b). (Plaintiff erroneously  
2 characterizes this as ASIC having a “lack of diversity.”) However, regardless  
3 of which test is utilized to determine ASIC’s citizenship, ASIC is not a citizen  
4 of California.

5 ASIC agrees with Plaintiff that corporations are deemed citizens of both  
6 their (1) state or states of incorporation, and (2) the state where their principal  
7 place of business is located. 28 U.S.C. § 1332(c). Under either inquiry, ASIC  
8 is not a citizen of California.

9 First, there is no question that Defendant ASIC is incorporated in, and is a  
10 citizen of, the state of Oklahoma. (Fisher Dec., Para. 4.)

11 Second, assuming that reliance upon the state of incorporation does not  
12 settle the issue of jurisdiction, the applicable Ninth Circuit test to locate a  
13 corporation’s “principal place of business” is to determine the state in which:  
14 (a) a “substantial predominance” of corporate activity takes place, or  
15 alternatively, (b) a majority of the corporation’s executive and administrative  
16 functions are performed. United Computer Systems, Inc. v. AT&T Corp., 298  
17 F.3d 756, 763 (9<sup>th</sup> Cir. 2002). While these two inquiries may overlap, both the  
18 number of corporate employees, and the location of top management, in a state  
19 can be determinative. (*Id.*)

20 Plaintiff also concedes that a corporation’s principal place of business is  
21 “typically the State where the executive and/or administrative offices of the  
22 corporation are located.” (Motion, p. 10, lines 1-3.) Put another way, the  
23 location of daily operating and management activities governs the selection of  
24 the principal place of business. Danjaq, S.A. v. Pathe Communications Corp.,  
25 979 F.2d 772, 776 (9<sup>th</sup> Cir. 2002).

26 In ASIC’s case, all of the above factors mandate that the state of Georgia is  
27 ASIC’s principal place of business. ASIC’s administrative offices are found in  
28 its main office located at 100 Galleria Parkway, S.E., Suite 700, Atlanta,

1 Georgia. (Fisher Dec., Para. 4.) Most, if not all, of ASIC's corporate activity,  
2 daily management activities, and executive functions are performed in its office  
3 in Atlanta, Georgia, where its corporate officers are located. (Fisher Dec.,  
4 Para. 4.) Moreover, ASIC does not have an office located in California, or any  
5 employees in California. (Fisher Dec., Para. 4.)

6 In contrast, the extensive so-called "evidence" recited in Plaintiff's motion  
7 is entirely irrelevant to ASIC, and should be disregarded as having any bearing  
8 on ASIC's citizenship. Rather, an examination of Plaintiff's "evidence" and  
9 the Declarations of Jean Fisher upon which the "evidence" is seemingly based,  
10 demonstrates that it actually pertains to another corporation, specifically  
11 ASIC's third-party administrator, ASIS. (See Motion, at pp. 3-6.) Plaintiff's  
12 motion also inappropriately refers to ASIC and ASIS interchangeably, in an  
13 apparent effort to somehow have ASIS' California activity attributed to ASIC.  
14 (Motion, at p. 5, lines 8-12.) Once again, ASIS is a separate corporation from  
15 ASIC, and is a third party administrator for Defendants ASIC and ASRRG.  
16 (Fisher Dec., Para. 7.)

17 Although not relevant to Plaintiff's motion, in the interest of clarity, it  
18 should be noted that ASIS is not a citizen of California, either. ASIS is a  
19 Georgia corporation, with its main office in Atlanta, Georgia. (Fisher Dec.,  
20 Para. 7.) ASIS has five (5) offices nationwide, with the only one of ASIS'  
21 offices located in California being the construction defect claims office in San  
22 Diego, California. (Fisher Dec., Para. 7.) ASIS has approximately 100  
23 employees in its main office in Atlanta, Georgia office, and only 15 employees  
24 in its California office. (Fisher Dec., Para. 7.)

25 Moreover, the mere sale of insurance policies to California residents does  
26 not establish ASIC's citizenship in California. If such were the case, then no  
27 nationwide insurer would ever be able to establish diversity.

28 As set forth above, ASIC is a citizen of the states of Oklahoma (where it is

1 incorporated), and Georgia (the location of its principal place of business), and  
2 28 U.S.C. § 1441(b) poses no impediment to ASIC's removal of this matter to a  
3 District Court sitting in California.

4 **IV. CONCLUSION**

5 ASIC's removal was proper and timely, by all standards. Accordingly,  
6 Defendant ASIC requests that the Court deny Plaintiff's Motion to Remand this  
7 action to the state court.

8  
9 DATED: April 14, 2008

Respectfully submitted,

Law Offices of David S. Blau, P.C.

10  
11 By: 

12 David S. Blau  
13 David M. Morrow  
14 Attorneys for Defendant  
15 American Safety Indemnity  
16 Company  
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**PROOF OF SERVICE**

*Acceptance Insurance Co. v. American Safety Risk Retention Group, Inc., et al.*

United States District Court Case No.

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6080 Center Drive, Suite 210, Los Angeles, California 90045.

On April 14, 2008, I served the foregoing documents described as **AMERICAN SAFETY INDEMNITY COMPANY'S OPPOSITION TO PLAINTIFF'S MOTION TO REMAND CASE; MEMORANDUM OF POINTS AND AUTHORITIES** on the interested parties in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

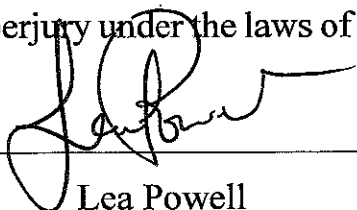
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- ☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ BY PERSONAL DELIVERY: I delivered such envelope by hand to the offices of the addressee.
- ☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.
- ☒ FEDERAL: I certify or declare that I am employed in the office of a member of the bar of this court at whose discretion the service was made.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on April 14, 2008 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Lea Powell

**SERVICE LIST**

**Acceptance Insurance Co. v. American Safety Risk Retention Group, Inc., et al.**

United States District Court Case No. CV08-01577 GPS (AGR<sub>x</sub>)

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Attorneys for Defendant  
American Safety Indemnity Company

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ACCEPTANCE INSURANCE  
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AMERICAN SAFETY RISK  
RETENTION GROUP, INC., and  
AMERICAN SAFETY INDEMNITY  
COMPANY,

Defendants.

Case No. CV08-01577 GPS (AGRx)

**DECLARATION OF JEAN D.  
FISHER IN SUPPORT OF  
DEFENDANT AMERICAN  
SAFETY INDEMNITY  
COMPANY'S OPPOSITION TO  
PLAINTIFF'S MOTION TO  
REMAND**

[Filed and Served Concurrently With  
Memorandum of Points and  
Authorities, and Evidentiary  
Objections to, and Motion to Strike  
Portions of, Declaration of Brett G.  
Hampton]

Date: April 28, 2008  
Time: 1:30 p.m.  
Place: Courtroom 7  
Judge: Hon. George P. Schiavelli

ORAL ARGUMENT REQUESTED

**DECLARATION OF JEAN D. FISHER**

I, Jean Fisher, declare as follows:

1. I am an attorney, duly admitted to practice before all of the Courts of the State of California, and am employed by American Safety Insurance Services, Inc., in its office located in San Diego, California. American Safety



1 Insurance Services, Inc. administers claims on behalf of Defendants  
2 AMERICAN SAFETY INDEMNITY COMPANY ("ASIC") and AMERICAN  
3 SAFETY RISK RETENTION GROUP, INC. ("ASRRG") in connection with  
4 liability policies issued by ASIC and ASRRG. I have personal knowledge of the  
5 facts set forth herein and, if called upon as a witness, I could and would testify  
6 competently as to all such matters under oath.

7 2. This Declaration is made in support of Defendant ASIC's Opposition  
8 to Plaintiff's Motion to Remand Case.

9 3. In my employment as an attorney for American Safety Insurance  
10 Services, Inc., I have served as CD Claims Manager and Corporate Claims  
11 Counsel. My duties and responsibilities for American Safety Insurance  
12 Services, Inc. have included oversight of all construction defect-related  
13 litigation naming ASIC and ASRRG.

14 4. Defendant ASIC is incorporated in the state of Oklahoma, and its  
15 main office is located in Atlanta, Georgia, at 100 Galleria Parkway, S.E., Suite  
16 700. Most, if not all, of ASIC's corporate activity, daily management activities,  
17 and executive functions are performed in ASIC's office in Atlanta, Georgia,  
18 where its corporate officers are located. ASIC has no employees in California,  
19 and no office located in California.

20 5. Defendant ASRRG is incorporated in the state of Vermont, and has  
21 its main office in Atlanta, Georgia. ASRRG's management activities and  
22 executive functions are performed in its office in Atlanta, Georgia, where  
23 ASRRG's officers are located. Likewise, ASRRG has no employees in  
24 California, and no office in California.

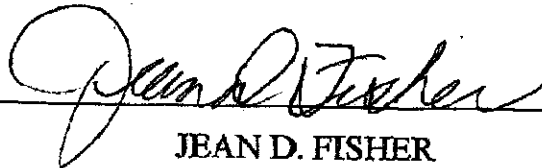
25 6. ASIC and ASRRG are separate, unrelated corporations. On the one  
26 hand, ASIC is a subsidiary of a publicly-traded company, American Safety  
27 Insurance Holdings, Ltd. On the other hand, ASRRG is a risk retention group,  
28 and as such, its shareholder members are comprised of its policyholders,

1 including Bay Area Construction Framers. ASRRG is not a subsidiary entity,  
2 and is not related to ASIC.

3 7. ASIS is a separate corporation from ASIC and ASRRG, and  
4 administers claims and underwriting on behalf of Defendants ASIC and  
5 ASRRG. ASIS is a Georgia corporation, with its main office in Atlanta,  
6 Georgia. ASIS has five (5) offices nationwide, including offices in Atlanta,  
7 Georgia; Cherry Hill and Middleton, New Jersey; San Diego, California; and  
8 Strongsville, Ohio. The only one of ASIS' offices located in California is the  
9 construction defect claims office located in San Diego, California. ASIS has  
10 approximately 100 employees in its main office in Atlanta, Georgia, and 15  
11 employees in its California office.

12 Executed this 14th day of April 2008 at San Diego, California.

13 I declare under penalty of perjury under the laws of the States of California  
14 and the United States of America that the foregoing is true and correct.

15  
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17   
18 JEAN D. FISHER  
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**PROOF OF SERVICE**

*Acceptance Insurance Co. v. American Safety Risk Retention Group, Inc., et al.*

United States District Court Case No.

STATE OF CALIFORNIA COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 6080 Center Drive, Suite 210, Los Angeles, California 90045.

On April 14, 2008, I served the foregoing documents described as **DECLARATION OF JEAN P. FISHER IN SUPPORT OF DEFENDANT AMERICAN SAFETY INDEMNITY COMPANY'S OPPOSITION TO PLAINTIFF'S MOTION TO REMAND** on the interested parties in this action by placing a true copy thereof enclosed in the sealed envelopes addressed as follows:

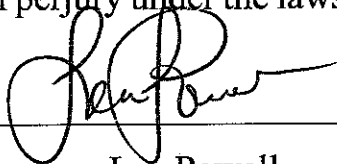
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- ☒ BY MAIL: I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- ☐ BY PERSONAL DELIVERY: I delivered such envelope by hand to the offices of the addressee.
- ☐ VIA FACSIMILE: I caused all of the pages of the above entitled document to be sent to the recipients noted above via electronic transfer (FAX) at the respective facsimile number(s) indicated above. This document was transmitted by facsimile and transmission reported complete without error.
- ☒ FEDERAL: I certify or declare that I am employed in the office of a member of the bar of this court at whose discretion the service was made.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postal meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on April 14, 2008 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
\_\_\_\_\_  
Lea Powell

**SERVICE LIST**

**Acceptance Insurance Co. v. American Safety Risk Retention Group, Inc., et al.**

United States District Court Case No. CV08-01577 GPS (AGRx)

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